

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION**

|                             |   |                            |
|-----------------------------|---|----------------------------|
| KEITH EDMUND GAVIN,         | ) |                            |
|                             | ) |                            |
| Petitioner,                 | ) |                            |
|                             | ) |                            |
| v.                          | ) | Case No. 4:16-cv-00273-KOB |
|                             | ) |                            |
| JEFFERSON S. DUNN,          | ) |                            |
| Commissioner of the Alabama | ) |                            |
| Department of Corrections,  | ) |                            |
|                             | ) |                            |
| Respondent.                 | ) |                            |

**VOLUME 39**

**State Court – Collateral Appeal Transcript**

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|  |   |                          |
|--|---|--------------------------|
| COURT OF CRIMINAL APPEALS NO.                        |   | CR-10-1313               |
| <b>APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS</b>   |   |                          |
| FROM   |   |                          |
| CIRCUIT COURT OF                                     | CHEROKEE  | COUNTY, ALABAMA          |
| CIRCUIT COURT NO                                     | CC-98-61.60 & CC-98-62.60   |                          |
| CIRCUIT JUDGE  | David A. Rains  |                          |
| Type of Conviction/ Order Appealed From:             | Rule 32   |                          |
| Sentence Imposed:                                    |   |                          |
| Defendant Indigent:                                  | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |                          |
| <b>KEITH EDMUND GAVIN</b>                            |   |                          |
|  |   | <b>NAME OF APPELLANT</b> |
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| Birmingham   | Alabama   | 35203                    |
| (City)   | (State)   | (Zip Code)               |
| <b>V.</b>  |   |                          |
| <b>STATE OF ALABAMA</b>                              |   |                          |
|  |   | <b>NAME OF APPELLEE</b>  |
| (State represented by Attorney General)              |   |                          |
| NOTE: If municipal appeal, indicate above, and enter |   |                          |
| name and address of municipal attorney below.        |   |                          |
| df   |   |                          |

(For Court of Criminal Appeals Use Only)

1 MS. CASEY: Objection, speculation.

2 If she says believe and doesn't know, then  
3 we're going to ask to strike that testimony.

4 A It was reported that that's where he slept.

5 Q It was reported to you that Mr. Gavin slept  
6 on the bunk bed when he was at home?

7 A Yes.

8 Q Is that also a picture of the bunk bed?

9 A Yes, it is.

10 Q What is this a picture of, Dr. Paramore?

11 A That's a picture of the front door. The  
12 glass is missing, so it's covered with  
13 plastic, and the handle is off, so there is  
14 a string to pull to get in and out.

15 Q Go to the next slide, please. Is this  
16 another room in the house?

17 A Yes, it is.

18 Q And the next slide. Going back to your  
19 overall opinions, do you believe it would  
20 have been important at Mr. Gavin's original  
21 sentencing hearing to discuss Keith's home  
22 environment, both as a child and when he  
23 returned from prison, and his neighborhood  
24 as a risk factor?

25 A Yes. I mean, Keith -- It was reported that

1 Keith's major focus when he returned home,  
2 he was really shocked at the condition of  
3 the home, you know, and wanted to do things  
4 like call Oprah to see, write letters to  
5 Oprah Winfrey to see if she could help, you  
6 know, with the repairs of the home. He held  
7 meetings with his siblings to see if they  
8 could come together to raise money, could  
9 pool the resources together to improve the  
10 home condition.

11 Q Now I would like to talk about Keith's  
12 exposure to guns, gangs, crime and violence.  
13 Let's talk first about Keith's exposure to  
14 guns. What did you learn about that?

15 A I learned that Keith's -- that it was easy  
16 for the kids in the complex to purchase a  
17 gun from what was called the candy lady.  
18 There was a person who sold candy out of her  
19 apartment, and in addition to selling candy,  
20 she sold guns. So any child could go down,  
21 if they had the money, and purchase a gun.

22 Q Did Keith purchase a gun from the candy  
23 lady?

24 A Yes, that's what was reported to me.

25 Q And when did Keith start carrying a gun?

1 A After Victor was shot.

2 Q Why is exposure to guns a risk factor?

3 A It just increases the opportunity for  
4 violence.

5 Q Does it make a difference as to whether  
6 you're exposed to people having guns for,  
7 say, hunting as opposed to guns used for  
8 illicit of purposes?

9 A Yes, because in hunting you're looking at a  
10 more socialized activity or sport. But when  
11 you're living in the housing project, you  
12 know, the only sport would basically be  
13 shooting each other.

14 MS. CASEY: Objection, Your Honor.  
15 There is no foundation for that opinion or  
16 for her to draw that conclusion.

17 THE COURT: Where are we in this  
18 report?

19 MS. WALKER: Excuse me?

20 THE COURT: Where are we in this  
21 report?

22 MS. CASEY: Page 26 or --

23 THE COURT: 22?

24 MS. CASEY: 20.

25 MS. WALKER: I mean, if you're

1           wondering how much longer we have, I would  
2           say probably another 15 or 20 minutes.

3                   THE COURT: Let's move on.

4           Q       And we've talked some about Keith's exposure  
5           to gangs; is that right?

6           A       Yes.

7           Q       Was Keith ever a gang member?

8           A       It was described that Keith, and reported by  
9           Keith himself, that he started a little gang  
10          referred to as the Pee Wee Gangsters. After  
11          he realized that he couldn't protect himself  
12          from the larger organized gangs, just a  
13          group of his friends, just so they could  
14          just watch each other's back is how it was  
15          described to me.

16          Q       And about what age was it when Keith formed  
17          the Pee Wee Gangsters?

18          A       Eight or nine.

19          Q       And was Keith a member of a gang when he was  
20          in prison in Illinois?

21          A       Yes, he was.

22          Q       Did he join a gang when he went to prison?

23          A       You know, research indicates that once you  
24          are incarcerated and you come from a certain  
25          neighborhood, you're basically known and

1           associated with the gangs associated in that  
2           neighborhood.

3                       MS. CASEY: Objection,  
4           non-responsive. The question was if he --

5                       THE COURT: Sustained.

6       Q       Did Keith join -- Do you know if Keith  
7               joined --

8       A       Yes. He was associated with the gangs  
9               associated with the neighborhood that he  
10              lived in.

11      Q       Now I want to discuss some of the violence  
12               outside of the home that Keith was exposed  
13               to. This slide is a little hard to read,  
14               but does this summarize some of the violence  
15               outside of the home that Keith was exposed  
16               to?

17      A       Yes, it does.

18      Q       Okay. I don't want to repeat the things  
19               that we've already talked about. What I  
20               think we haven't talked about is the third  
21               one where it says Victor at the age of 13  
22               was held by his ankles out of a 15-story  
23               window by gang members; is that accurate?

24      A       Yes.

25      Q       And it says that Victor witnessed a murder.

1 Do you know the circumstances of that?

2 A Victor described it as he was walking down  
3 the street and a car drove past and they  
4 stopped, threw a body out in front of him  
5 and drove off.

6 Q And it says that Willie --

7 MS. CASEY: Objection, Your Honor.  
8 I would just like to have her testify as  
9 what violence was in the neighborhood rather  
10 than her reading off a list and letting her  
11 confirm it.

12 THE COURT: Well, and I think that  
13 the question here is how the -- What did  
14 Keith Gavin know and when did he know it?  
15 The fact that there were other violent acts  
16 observed by or which involved other family  
17 members or other people in the neighborhood  
18 have to be in some way tied back to Keith  
19 Gavin to give this witness a basis on which  
20 to draw some opinions about the affect on  
21 Keith Gavin. So the fact that Victor saw  
22 somebody murdered and dumped out in the  
23 street in front of him doesn't tell me  
24 anything.

25 MS. WALKER: Perhaps I could ask



1 Dr. Paramore some questions to have her try  
2 to link that up for us.

3 THE COURT: Well, what I want to  
4 know is -- I mean, I think it's pretty clear  
5 that Mr. Gavin grew up in a dysfunctional  
6 family and that he lived in and was raised  
7 in an area where there was a lot of  
8 violence.

9 MS. WALKER: Yeah, although I think  
10 the State's expert is going to attempt to  
11 dispute that.

12 THE COURT: Well, I have a lengthy  
13 report here which may or may not -- I don't  
14 remember what it says about Victor's  
15 exposure to acts of violence, but what  
16 Victor was exposed to is irrelevant to me  
17 unless you can tie it back to Keith Gavin in  
18 some way. Let's take a break for a few  
19 minutes. How about seeing if you can figure  
20 out a way for us to get through. We'll take  
21 10 minutes.

22 (Recess)

23 (Proceedings resumed)

24 MR. MAZE: Judge, before we start,  
25 remind me before we go to lunch what we had

1           talked about yesterday as far as adding a  
2           second witness. We're going to want to add  
3           the Sheriff and just show him some pictures  
4           that we took that go directly to what Mr.  
5           Gavin testified to yesterday. We'll just  
6           show the Court and counsel the pictures  
7           before lunch just so nobody is kind of  
8           caught off guard on what we're trying to do.  
9           He'll be, like, three minutes. He's just  
10          authenticating them.

11                   THE COURT: Okay, we'll talk about  
12          them before we leave here.

13                   MR. MAZE: I just wanted to bring  
14          it up before I forgot.

15                   THE COURT: Thank you.

16                   DIRECT EXAMINATION RESUMED

17           BY MS. WALKER:

18           Q       Dr. Paramore, I'm going to try to speed  
19           things along a little bit here. Was Keith  
20           the victim of gang violence when he was  
21           incarcerated in Illinois?

22           A       Yes, he was.

23           Q       What can you tell us about that incident?

24           A       He was, I believe, stabbed and subsequently  
25           sent to the hospital, stabbed numerous

1 times.

2 Q And was it your understanding that it was a  
3 gang related stabbing?

4 A Yes, it was.

5 Q And Mr. Gavin was hospitalized for that?

6 A Yes, he was.

7 Q And was he then transferred to a different  
8 prison?

9 A Yes.

10 Q And, now, just focusing on Keith's personal  
11 exposure to guns, gangs and violence, what  
12 in your view are the implications of that  
13 for understanding Keith as a person?

14 A First of all, you have to look at his  
15 predispositions, you know, in the family.  
16 You have significant history of prostitution  
17 in his family, drug abuse, incarcerations,  
18 criminal activity. Some of the criminal  
19 activity was supported by the father and he  
20 actually benefited from some of that. When  
21 you look at all of the risk factors, those  
22 things influence his life and the decisions  
23 that he made in addition to the environment  
24 that he lived in.

25 Q Let's turn to the last two risk factors that

1           we're going to discuss.

2                       MS. WALKER: Caroline, this is on  
3           slide 18. Thank you.

4           Q       The first one is disrupted schooling. Is it  
5                   your opinion that Keith Gavin's schooling  
6                   was disrupted?

7           A       Yes.

8           Q       And what is the basis for that opinion?

9           A       When Keith was 13 he was involved in a  
10                   burglary, and as a result of that, when he  
11                   returned to school -- and, you know what,  
12                   I'm not really sure in terms of whether he  
13                   was sent to a vocational school, part of  
14                   that was because of, you know, the charges.  
15                   The other part was because of the academic  
16                   process and maybe with him not achieving up  
17                   to his potential. He was sent to a  
18                   vocational school, and because of that had  
19                   difficulties graduating on time and with his  
20                   class, had to attend summer school prior to  
21                   his eighth grade graduation. And also while  
22                   in eleventh grade he was arrested and once  
23                   he was released, was not allowed to return  
24                   to his high school. And I believe that made  
25                   a major impact on his life because he

1           enjoyed school, that was a positive outlet  
2           for him. He was sent to an alternative  
3           school and had to cross gang territory to  
4           get there. And because of that discomfort  
5           and the risk involved in that, he eventually  
6           was not able to complete his high school.

7           Q       Is it also your opinion that Keith's low  
8                    socioeconomic status was a risk factor?

9           A       Yes.

10          Q       And, obviously, it's a common circumstance  
11                    for people to have low socioeconomic status,  
12                    you're not suggesting that poverty causes  
13                    people to commit a crime, are you?

14          A       No, absolutely not.

15          Q       So why is that a risk factor for Keith?

16          A       It limited his exposure, you know, to  
17                    certain things and his outlet. Keith had  
18                    limited interventions and resources  
19                    available to him to assist him in making  
20                    alternate decisions and choices in his life.

21          Q       Is it your opinion that Keith's low  
22                    socioeconomic status compounded some of the  
23                    other risk factors we've discussed?

24          A       Yes.

25          Q       And why is that?

1           A       Keith remained in the neighborhood that he  
2                   lived in because of his low SES level.  
3                   Because of his income level, he was eligible  
4                   to continue to live in the projects and  
5                   living there compounded everything in terms  
6                   of his exposure to the risk.

7           Q       And I think you said before, you reviewed  
8                   Dr. King's notes of his interview with  
9                   Keith; is that right?

10          A       Yes, I did.

11          Q       And you're aware that Dr. King's interview  
12                  notes state that Keith told him, quote, we  
13                  wasn't rich, but we wasn't poor?

14          A       Yes.

15          Q       Do you recall that? Does that statement by  
16                  Keith make you question whether the Gavins  
17                  had a low socioeconomic status while Keith  
18                  was growing up?

19          A       I'm sorry, could you repeat the question?

20          Q       Does the fact that Keith said that to Dr.  
21                  King make you question whether he, in fact,  
22                  had a low socioeconomic status growing up?

23          A       No. It was obvious he had a low SES level  
24                  when he was growing up.

25          Q       Why do you say that?

1           A       Once again, he had to meet the income  
2                   criteria in order to be allowed to continue  
3                   to live in the projects. In addition to  
4                   that, the father worked, but the father also  
5                   gambled, so they had limited income, and  
6                   Keith worked really hard to expose his  
7                   siblings to things outside of the  
8                   neighborhood. So it is not unusual to want  
9                   to minimize your level in society when you  
10                  work so hard to overcome it.

11          Q       Now I would like to talk about the  
12                   protective factors in Keith Gavin's life.  
13                   Can you remind us quickly what protective  
14                   factors are?

15                   MS. CASEY: Objection, asked and  
16                   answered.

17                   THE COURT: Go ahead.

18          Q       In your research, Dr. Paramore, were you on  
19                   the lookout for protective factors that  
20                   might have applied to Keith?

21          A       Yes, I was.

22          Q       So in your research, you weren't just  
23                   looking for risk factors?

24          A       No.

25          Q       And did you identify any protective factors



1           for Keith?

2           A       Yes, I did.

3           Q       And what are those?

4           A       His mother and two of his adult friends.

5           Q       How is Keith's relationship with his mother  
6                   a protective factor?

7           A       Because she loved him and they had a good  
8                   relationship, she wanted to protect him.  
9                   However limited in parenting, she still  
10                  wanted to support him in any way possible.

11          Q       And who is Mary Ann Morris?

12          A       She's an adult friend and also the mother of  
13                  Keith's childhood girlfriend.

14          Q       How did you come to identify Mrs. Morris?

15          A       She was named by Keith.

16          Q       And did you interview Mary Ann Morris?

17          A       Yes, I did.

18          Q       And did you say that Keith also mentioned  
19                  her when you interviewed him?

20          A       Yes.

21          Q       And what did you learn about their  
22                  relationship?

23          A       They had a good relationship. Keith  
24                  supported her as much as she supported him.  
25                  She said she had known Keith since before



1           the age of seven and as well as his siblings  
2           and his parents. He would run errands for  
3           her and it was significant her to that he  
4           didn't charge her anything, didn't ask for  
5           any money. When she needed things, like her  
6           phone was off or electricity was off, Keith  
7           would often pay to have those services re-  
8           connected.

9           Q       Would you characterize their relationship as  
10           being one of role reversal as well?

11          A       Yes, I would.

12          Q       And did Keith also have a relationship with  
13           Mrs. Morris' daughter?

14          A       Yes.

15          Q       And what did you learn about that?

16          A       He really cared for Patsy was her name, and  
17           asked her to marry him. And I think it was  
18           significant because I believe at the time he  
19           was 17, Keith felt that by marrying Patsy  
20           and having his own family, it would kind of  
21           pull him from some of the major  
22           responsibilities for caring for his family  
23           and, you know, his siblings and his nieces  
24           and nephews and kind of give him a break  
25           from that. This is my family now, this is

1           who I'm responsible for.

2           Q       Did Patsy Morris agree to marry Keith?

3           A       No, she didn't.

4           Q       And what happened to Patsy?

5           A       The mother reports that Patsy is addicted to  
6           drugs and lives in the streets.

7                       MS. CASEY:  Objection, relevance.

8                       THE COURT:  Overruled.

9           Q       And who is Deloris Coleman?

10          A       She's another adult friend from the  
11          neighborhood.

12          Q       And how did you learn about Mrs. Coleman?

13          A       From Keith.

14          Q       And did you interview her?

15          A       Yes, I did.

16          Q       And what did she say about her relationship  
17          with Keith?

18          A       Once again, very similar to Mrs. Morris,  
19          they had a good relationship.  She had known  
20          Keith since the age of seven, as well as his  
21          siblings.  Her daughter and Elaine were best  
22          friends and she saw Keith as someone who  
23          worked really hard to try and protect and  
24          take care of his family, and he was good to  
25          the senior citizens in the complex.

1       Q       In your opinion, did the risk factors in  
2               Keith's life outweigh the protective  
3               factors?

4       A       Yes.

5       Q       Was any of the mitigation evidence we've  
6               discussed today presented at Mr. Gavin's  
7               sentencing hearing?

8       A       Not to my knowledge, they were not.

9       Q       And in your opinion, was the jury given any  
10              insight into Mr. Gavin's life history?

11      A       They were not to my knowledge.

12      Q       And you obtained a lot of the evidence that  
13              forms the basis for your opinions by  
14              interviewing Keith's family members; is that  
15              right?

16      A       Yes.

17      Q       Is it a customary approach to doing a  
18              mitigation assessment to interview family  
19              members?

20      A       Yes.

21      Q       And friends?

22      A       Yes.

23      Q       Do you have any reason to believe that this  
24              information was not available at the time of  
25              Keith's original trial?

1           A       No. I believe it was available.

2           Q       And are you aware that Annette Gavin  
3 testified at Keith's sentencing hearing?

4           A       Yes.

5           Q       Could she have told the jury about most of  
6 the facts you've discussed today?

7                   MS. CASEY: Objection, speculation.

8                   THE COURT: Overruled.

9           Q       You can go ahead and answer.

10          A       I believe it would have been difficult for  
11 Mrs. Gavin under testimony to share personal  
12 and sensitive issues in her life, and also  
13 to recall particular information. It did  
14 take her a while to be able to reflect and  
15 to recall information with me, and that is  
16 why it took at least five visits with her,  
17 in addition to numerous phone conversations.

18          Q       So if you were to assume that,  
19 hypothetically, that Keith's trial counsel  
20 had not discussed any of these issues with  
21 her in advance, would that have made it  
22 difficult for her to testify to them?

23          A       Yes, it would.

24                   MS. WALKER: That's all I have,  
25 Your Honor.

1 THE COURT: Thank you.

2 CROSS EXAMINATION

3 BY MS. CASEY:

4 Q Mrs. Paramore, you're a licensed school  
5 psychologist; is that correct?

6 A Actually, it's Dr. Paramore.

7 Q I'm sorry, Dr. Paramore, you're a licensed  
8 school psychologist?

9 A Yes, I am.

10 Q You work in schools?

11 A Yes, I do.

12 Q Do you have your own practice?

13 A No, I don't.

14 Q Are you under the laws of the state of  
15 Illinois allowed to practice outside of a  
16 school?

17 A Yes, I am.

18 Q As a psychologist?

19 A Yes, I am.

20 Q What type of psychology can you practice?

21 A Clinical. Clinical or school psychology.

22 Q What kind of clinical psychologist training  
23 do you have?

24 A I'm certified under LCPC to perform clinical  
25 activities in addition to diagnosis,

1 treatment planning, supervision.

2 Q So what clinical experience do you have?

3 A I've worked as a therapist in mental health  
4 in the state of Mississippi. I've worked as  
5 a clinical social worker in the state of  
6 Nevada, and I perform clinical duties as a  
7 psychologist in Chicago Public School  
8 System.

9 Q I'm asking you what is a clinical duty?

10 A I didn't understand that to be the question.

11 Q What is a clinical duty?

12 A Diagnosis, therapeutic intervention,  
13 treatment planning.

14 Q And as a school psychologist, you can  
15 diagnosis people and give them treatment?

16 A As an LCPC Certified Psychologist, yes, I  
17 can.

18 Q LCPC is not a Certified Psychologist, LCPC  
19 is a Licensed Clinical Professional  
20 Counselor.

21 A I can still perform the duties that you  
22 described with an LCPC.

23 Q Are you allowed to write out prescriptions  
24 for people?

25 A No, I'm not a psychiatrist.

1 Q Okay, are you allowed to go into hospitals  
2 and perform any type of evaluations?

3 A Yes, I am.

4 Q Oh, you're allowed to go into --

5 A If I'm employed in a capacity where I'm  
6 allowed to go into that particular hospital,  
7 yes.

8 Q But you're not?

9 A I'm employed by the Chicago Public School  
10 System and the Public Defender's Office.

11 Q Back to my question, you're not employed by  
12 anyone that allows you to go into hospitals  
13 and make diagnosis.

14 MS. WALKER: Objection, relevance.

15 THE COURT: I'm not sure that --  
16 I'm not sure I understand the question.  
17 Let's make sure that she does.

18 MS. CASEY: Okay, I'm asking her at  
19 this point is she able to go into any type  
20 of hospital or clinic to make diagnosis? I  
21 believe she's overstated her qualifications  
22 and our witness will point that. I'm just  
23 trying to get out what she says --

24 THE COURT: What do you mean by is  
25 she able to go? I think that may be --

1 Q Are you licensed to go into a hospital and  
2 perform any type of diagnosis?

3 A Not if I'm not working in the capacity to do  
4 that. You can't just walk into a hospital  
5 and begin working with patients.

6 Q Have you ever held my type of license that  
7 you did that?

8 A I haven't worked in that capacity.

9 Q In this case I'm looking at your report,  
10 page two, your sources in this case you said  
11 you spoke to Keith Gavin in person?

12 A Yes, I did.

13 Q How many times did you speak to him?

14 A Once.

15 Q When was that?

16 A 2006, I believe.

17 Q Do you recall what time of the year?

18 A I believe it was March.

19 Q Do you know how long you spoke to him?

20 A Approximately three hours.

21 Q Okay. And Annette Gavin, when did you speak  
22 to her?

23 A I don't recall as I did.

24 Q When did you speak to Sharon Gavin?

25 A I don't have a list of the dates that I



1 spoke with the people I interviewed.

2 Q So you can't tell me when you spoke to Keith  
3 Gavin, Annette Gavin, Sharon Gavin, Geanetta  
4 Gavin, Elaine Gavin, Dwayne Gavin, Jerry  
5 Gavin or Mary Ann Morris?

6 A I have the dates in my notes, I do not have  
7 the dates available to me now to give you  
8 those dates.

9 Q You can get your notes. We can wait for to  
10 you get them to look at.

11 A I don't have my notes with me.

12 Q You didn't bring your notes with you to  
13 testify?

14 A No.

15 Q Did you provide those notes to counsel?

16 A I believe they have the dates, yes, but I  
17 don't know if they have them with them.

18 Q Did you attach that to your report?

19 A What?

20 Q The dates that you interviewed these people.

21 A I don't recall if it's in these notes.

22 Q Okay. The phone interviews that you had  
23 with Victor Gavin, do you know when that  
24 was?

25 A No, I don't have the exact dates with me.

1 Q Do you know how long that lasted?

2 A With Victor? No, I don't recall.

3 Q Do you know Sharon Gavin, when you spoke to  
4 her?

5 A I spoke with Sharon several times, I don't  
6 have the exact dates.

7 Q Do you know how long that lasted, total, you  
8 spoke to her?

9 A I don't recall.

10 Q Nicole Gavin, when did you speak to her?

11 A It's the same thing for any of them, I don't  
12 have any of the dates with me.

13 Q So you can't tell this Court when you spoke  
14 to any of these witnesses today in court?  
15 You can't sit and tell Judge Rains when you  
16 spoke to any of these witnesses?

17 A Not the exact date, no.

18 Q Can you tell him how long you spoke to any  
19 of these witnesses?

20 A Not the exact time, no.

21 Q I want to look at your Appendix B, the  
22 records you reviewed. Is this a list of the  
23 records you reviewed in making your -- doing  
24 your mitigation report?

25 A Yes.

1       Q       The Circuit Court of Cook County Adult  
2               Probation Pre-sentencing Social  
3               Investigation Report?

4       A       If it's listed there, yes.

5       Q       The City of Chicago arrest record?

6       A       Yes.

7       Q       And whose arrest record was that?

8       A       Mr. Gavin.

9       Q       Keith Gavin, the defendant?

10      A       Yes.

11      Q       Okay. And the Office of State Attorneys  
12               arrest record; would that have been of Keith  
13               Gavin?

14      A       Yes.

15      Q       Illinois Department of Law Enforcement  
16               transcript, what would that have been a  
17               transcript of?

18      A       These documents were all related to Mr.  
19               Gavin.

20      Q       But what was it a transcript of?

21      A       His incarceration history.

22      Q       Transcript from his first trial or a  
23               transcript -- it's going to have to be a  
24               transcript of some type of court proceeding,  
25               what type of court --

1 A I don't recall.

2 Q But you reviewed it in making your  
3 conclusions?

4 A Yes, I did.

5 Q And you don't recall. Do you have that  
6 transcript with you?

7 A No, I don't.

8 Q The FBI Investigation Crime Information  
9 Report. Who was that related to?

10 A Mr. Gavin.

11 Q And what was the contents of that report?

12 A Information related to an arrest at that  
13 time.

14 Q Which arrest?

15 A The one in the report, 584 560 R8.

16 Q That's what I'm asking you. What crime or  
17 what investigation was -- what were they  
18 investigating at 584 560 R8?

19 A I don't have that with me.

20 Q You don't remember?

21 A I don't have it with me, no.

22 Q My question is do you remember what that was  
23 about?

24 A No, I don't.

25 Q But you used that in making this report?

1 A Yes. At that time I had it with me.

2 Q You were aware you were coming to trial  
3 today to testify about this case, aren't  
4 you?

5 A Yes.

6 Q And as a part of testifying, to review your  
7 report?

8 A Yes.

9 Q And you did that?

10 A Yes, I did.

11 Q And you still don't recall several of these  
12 things that you reviewed?

13 A No, I don't.

14 Q You reviewed memos of interviews of the  
15 Gavin family. Whose memos were those?

16 A The ones admitted by defense team.

17 Q Do you know where those memos came from?

18 A From their interview with Mrs. Gavin.

19 Q It says Gavin family. How many memos were  
20 there?

21 A I believe there were several memos related  
22 to Mrs. Gavin and other family members,  
23 Sharon, that was submitted by defense team.

24 Q Do you know who did interviews?

25 A Yes, members of the defense team.

1           Q       But you didn't do the interviews of the  
2                    memos that you have, those weren't  
3                    interviews that you did?

4           A       No.

5           Q       Did you prepare any memos or any notes from  
6                    those interviews that you did?

7           A       No. No.

8           Q       So you have notes that says when you talked  
9                    to them, but you didn't take any notes while  
10                   you were interviewing them?

11          A       No.

12          Q       You interviewed --

13                   MS. WALKER: Your Honor, I don't  
14                   think the witness understands the question.

15                   MS. CASEY: Your Honor, that's not  
16                   an objection.

17          Q       I'm going to ask again, you took no notes  
18                   while you were interviewing the Gavin  
19                   family?

20          A       Oh, yes, I did.

21          Q       Oh. Did you make memos?

22          A       I don't understand the question.

23          Q       Did you write down those -- Were those notes  
24                   written?

25          A       No. Just notes.

1 Q Did you write the notes down that you took?

2 A Yes, I did.

3 Q And you gave those to defense counsel?

4 A No, I did not.

5 Q Do you have those with you?

6 A I gave the results of the notes to the  
7 defense team in the form of the report. The  
8 notes were used to develop the report.

9 Q And you don't have those notes with you?

10 A No, I don't.

11 Q I've never seen those notes.

12 A They don't have those notes.

13 Q You said that you reviewed the state of  
14 Illinois Department of Corrections  
15 disciplinary record; that of Mr. Gavin?

16 A Yes.

17 Q And you reviewed the Adjustment Committee  
18 summary?

19 A Yes.

20 Q And you reviewed work assignments?

21 A Yes.

22 Q And are you aware of what type of work Mr.  
23 Gavin did while he was in the department of  
24 Illinois corrections?

25 A He worked in medical records.

1 Q Anything else?

2 A Clerk positions.

3 Q Anything else?

4 A Not that I recall in detail.

5 Q Are you familiar with the fact that he did  
6 plumbing work?

7 A Yes, I am.

8 Q Okay. What other -- That's all the work you  
9 remember, though?

10 A I'm sorry?

11 Q You don't remember any other work history?

12 A No.

13 Q So if Mr. Gavin testified he did more than  
14 those three, you would just not remember  
15 that from that report?

16 A That was not part of my interview with Mr.  
17 Gavin.

18 Q You didn't ask Mr. Gavin about what kind of  
19 work he did in the Illinois Department of  
20 Corrections?

21 A My role as mitigation specialist was to deal  
22 with Mr. Gavin's life, not his incarceration  
23 history.

24 Q So your job was to look at all the bad stuff  
25 and ignore the good stuff.



1 MS. WALKER: Objection,  
2 argumentative and mischaracterizes the  
3 record.

4 THE COURT: Sustained.

5 Q You didn't talk to him about anything that  
6 happened, any work he did in the Department  
7 of Corrections?

8 A That was not my role, no.

9 Q But you just testified earlier that he had  
10 been stabbed several times or attacked by  
11 gangs in the Department of Corrections.

12 A You asked me if I reviewed the records and I  
13 indicated yes, but that was not part of my  
14 role and responsibilities to be concerned  
15 with incarceration history.

16 Q But wouldn't it be important that you do  
17 that in determining mitigation in this case?

18 A Not in my opinion.

19 Q So 17 years that Mr. Gavin spent in the  
20 Illinois Department of Corrections, you  
21 would say it was not important to  
22 mitigation?

23 A It was not my role at the time to  
24 investigate his incarceration history.

25 Q Did you rely on any of that in coming to

1           your conclusions?

2           A       No, I did not.

3           Q       So 17 years of Mr. Gavin's life are not even  
4                   included in any of the reports that you  
5                   created?

6           A       My role was to look at his life prior to his  
7                   incarceration.

8           Q       That wasn't my question, Dr. Paramore. My  
9                   question was you didn't include 17 years of  
10                  his life in your report?

11          A       I did not.

12          Q       Those were the 17 years previous to this  
13                  murder?

14          A       That was not my role.

15          Q       That's not my question. The 17 years he was  
16                  in the Illinois Department of Corrections  
17                  was the 17 years directly prior to this  
18                  murder?

19          A       What is the question? I don't understand  
20                  the question.

21                   MS. WALKER: Your Honor, and I  
22                   object to this line of questioning. As  
23                   counsel knows full well, we have a separate  
24                   expert to discuss Mr. Gavin's time in the  
25                   Illinois Department of Corrections.

1                   THE COURT: Well, this is a person  
2                   who appears here today as a mitigation  
3                   expert, and the question is are those 17  
4                   years that Mr. Gavin spent in the state  
5                   penitentiary in Illinois relevant to her  
6                   findings with respect to mitigation? And  
7                   she's apparently taken the position that  
8                   they are not relevant. I find that a little  
9                   bit surprising, quite frankly.

10                  MS. WALKER: I don't believe that  
11                  Dr. Paramore has been asked that question.

12                  THE COURT: Well, she hasn't  
13                  answered the question very directly, and I  
14                  think the question has been asked very  
15                  directly. Let's move on. Ask the question  
16                  again and let's get an answer.

17           Q        Okay. Do you believe that the 17 years that  
18                   Mr. Gavin was in the Department of Illinois  
19                   Corrections, which was the 17 years previous  
20                   to this crime, do you believe those were  
21                   important to your determination of  
22                   mitigation?

23           A        I believe that they're important,  
24                   absolutely, in terms of mitigation. But  
25                   once again, my role was clearly defined. We

1           had another psychologist who was responsible  
2           for the other part that you are asking about  
3           and that was not my responsibility.

4           Q       So as a mitigation specialist, you pick and  
5           choose what you look at?

6           A       No. As a member of the defense team, my  
7           role was very clearly defined in terms of  
8           what was expected.

9           Q       So you're a member of the defense team now?

10          A       Mitigation specialists are members of the  
11          defense team.

12          Q       You didn't talk to Mr. Gavin about any of  
13          the years that he was in prison?

14          A       No, I don't recall discussing issues in  
15          prison.

16          Q       You just testified earlier that he was  
17          attacked in prison by a gang several times  
18          on direct.

19                   MS. WALKER: Objection,  
20                   mischaracterizes the testimony.

21                   MS. CASEY: Your Honor, she  
22                   testified, I have the notes written right  
23                   here.

24                   MS. WALKER: She did not testify he  
25                   was attacked several times in prison.

1 THE COURT: I'm looking back at her  
2 report. I know that she did say at page 24  
3 -- no, I'm sorry, that's not the right page.  
4 I do think that the report includes, and I  
5 think her testimony includes, and I'm not  
6 going to go back and try to study my notes  
7 right now, but she has spoken to some of the  
8 experiences that Mr. Gavin had while in  
9 prison. Now, whether she said that he was  
10 stabbed several times in prison, I don't  
11 recall.

12 MS. CASEY: And I can withdraw that  
13 and ask it a different way, Your Honor.

14 THE COURT: Okay, thank you very  
15 much.

16 Q You testified earlier about violent  
17 experience that Mr. Gavin had while in the  
18 Illinois Department of Corrections, correct?

19 A I said I reviewed the records indicating the  
20 experience that he had.

21 Q You never discussed -- you reviewed all  
22 these records, but never discussed it with  
23 Mr. Gavin?

24 A My opportunity to personally interview Mr.  
25 Gavin was limited.

1 Q You're saying that --

2 A My focus was basically with his childhood  
3 history. I do not recall in depth  
4 interviews regarding incarceration with Mr.  
5 Gavin.

6 Q Okay. Did you ever ask defense counsel to  
7 re-interview Mr. Gavin, for more time?

8 A No.

9 Q You testified that he had had some, a  
10 violence in the Illinois Department of  
11 Correction. Do you know whether or not he  
12 provoked any of that violence?

13 A I testified that I read the reports.

14 Q Based on the reports, are you aware of  
15 whether or not he provoked any of that  
16 violence?

17 A No, I'm not aware.

18 Q Going back to your Appendix B, you reviewed  
19 State of Illinois Department of Corrections  
20 Adjustment Committee summary, the Offender  
21 Tracking System-transfer reports, work  
22 assignments and medical records; is that  
23 correct, from the Illinois Department of  
24 Corrections?

25 A Yes.

1 Q And then interview transcripts of Keith  
2 Gavin. What interview transcripts did you  
3 review?

4 A Those were the interview transcripts by the  
5 defense team.

6 Q Okay, how much or how many transcripts were  
7 there? How big was the transcript?

8 A They were from several different team  
9 members.

10 Q Okay. When was the interview done?

11 A I don't have the dates in front of me.

12 Q Was it more than one occasion?

13 A Yes, it was.

14 Q How was it recorded?

15 A I'm sorry, I don't understand the question.

16 Q How were those interviews recorded in order  
17 to have a transcript? Was it by a tape?  
18 How do you know --

19 A Yes.

20 Q So they took a tape into Holman and recorded  
21 interviews?

22 A Yes.

23 THE COURT: Excuse me for  
24 interrupting you just a second. I want to  
25 ask her a question at this point about her

1           Appendix B. You indicated earlier that you  
2           reviewed memos of interviews of Gavin  
3           family, that's about mid-way down on your  
4           Appendix B, and then, of course, the last  
5           entry on Appendix B is interview  
6           transcripts. And I think in response to the  
7           questions respecting both of those entries,  
8           you've said that those were interviews  
9           conducted by the defense team, not your  
10          interviews. Am I right about that?

11          A       Yes, sir.

12                   THE COURT: So this report where  
13           you have a list of people that were  
14           interviewed beginning on page 14, Elaine,  
15           Victor, Steven and so forth on over for a  
16           couple of pages from that, did you interview  
17           those people or did someone else interview  
18           those people?

19          A       No, I interviewed them.

20                   THE COURT: And would I understand,  
21           then, that there are interviews of people  
22           other than those people whose names appear  
23           in this report?

24          A       No, there were interviews that were  
25           conducted prior to my involvement that I



1 reviewed, but I interviewed everyone that I  
2 documented in this report personally.

3 THE COURT: All right. Well, were  
4 there people other than the ones who are  
5 named in this report who gave interviews  
6 that you reviewed -- that gave interviews to  
7 other people, to the defense team, and you  
8 reviewed those interviews, that you did not  
9 include in this report, and if so, why?

10 A Okay, let me make sure I understand the  
11 question.

12 THE COURT: Well, let's suppose  
13 that one of the lawyers over here at this  
14 table goes out and interviews John Doe.

15 A Okay.

16 THE COURT: And John Doe tells them  
17 that -- gives them information about Keith  
18 Gavin that they make a memorandum of or  
19 notes of or a report about, or that Mr. John  
20 Doe gives a tape recorded statement. And  
21 the defense team gives you that report of  
22 that interview, either in its tape recorded  
23 form or its written form.

24 A Okay.

25 THE COURT: And you decided that

1           you would or would not use it in this  
2           report. I want to know whether any such  
3           interviews, and, if they are not included in  
4           here, I want to know why.

5           A       There are interviews. I did not take  
6           information from their interviews for my  
7           report because I gathered my own information  
8           from my interviews. There were people, I  
9           believe, that were interviewed that I did  
10          not even list or include because that wasn't  
11          -- I didn't feel that was the focus that I  
12          wanted to take in my investigation. There  
13          were people I believe that the investigator  
14          had interviewed that was not related to, I  
15          felt was not related to information I was  
16          trying to get for Mr. Gavin's life.

17                   THE COURT: Well, if the opposite  
18          of mitigation is aggravation, were there  
19          interviews done which might be classified as  
20          evidence in aggravation rather than evidence  
21          in mitigation which you did not include in  
22          the report because your job was to focus on  
23          mitigation only?

24          A       I believe the information that they had that  
25          I reviewed in their reports was very similar

1 to the information that I retained from the  
2 family. But I reviewed the documents just  
3 to review the documentation because they  
4 sent me the documentation. I wanted to  
5 conduct an independent investigation for my  
6 purpose without including information that  
7 was related to what they were looking for in  
8 their interviews. Part of the interviews  
9 that they conducted included information  
10 related to the trial, and that wasn't my  
11 focus. So I just reviewed them just to  
12 review the documentation, but I didn't  
13 include that information in my report.

14 THE COURT: When you conduct a  
15 mitigation study, and I understand you've  
16 done this four times before this case; is  
17 that right?

18 A Yes.

19 THE COURT: This is number five?

20 A Yes.

21 THE COURT: If you come upon  
22 information which you feel is damaging to  
23 the defendant, and information which is not  
24 in mitigation of the crime, but, in fact, is  
25 an aggravating factor, what do you as a

1 mitigation specialist do with that  
2 information?

3 A I report it.

4 THE COURT: To who?

5 A To the defense team.

6 THE COURT: Okay. It's not  
7 included in your written report?

8 A Yes, it is. I report it in written form to  
9 the defense team.

10 THE COURT: So if you found any  
11 such information, would it be in this  
12 report?

13 A Yes, it would.

14 THE COURT: Since there is nothing  
15 in this report that you classify as an  
16 aggravating factor or aggravating  
17 information, may I conclude from that that  
18 you found no other information which you  
19 found to be aggravating?

20 A No, all the information I found is included  
21 in this report.

22 THE COURT: Okay. I didn't mean to  
23 take over from you, I'm sorry.

24 MS. CASEY: I can make a point,  
25 Your Honor, I think to answer your question

1           that you're going after if you will give me  
2           just one or two questions about that  
3           question you just asked.

4                   THE COURT:   Okay, go ahead.

5       Q       On direct testimony you testified that Mr.  
6           Gavin had committed burglary at the age of  
7           13; is that correct?

8       A       Yes.

9       Q       Can you point out in your report where you  
10          listed that he had committed burglary at the  
11          age of 13?

12      A       I know I documented that he committed  
13          illegal acts in order to attain financial  
14          gains to support the family. That is the  
15          reference to that.

16      Q       You said it disrupted his schooling, didn't  
17          you? That the reason --

18                   THE COURT:   That was, it says he  
19          got shot in self-defense.

20                   MS. CASEY:   But what I'm getting at  
21          is on page 23 she said that he committed  
22          burglary, and that's the reason why in  
23          eighth grade he had to go to summer school.  
24          If you look at page 23, she said he failed  
25          to meet the requirements needed for

1 completion of eighth grade, she doesn't  
2 refer to that burglary as the reason why he  
3 didn't finish eighth grade. Now, when you  
4 turn the page, she said during the eleventh  
5 grade he shot a man in self-defense. She  
6 included that. She didn't include the  
7 burglary which disrupted schooling, which  
8 she testified earlier prevented him from  
9 finishing the eighth grade and required him  
10 to go to summer school.

11 A But I said I wasn't sure whether it was the  
12 burglary or his school performance the  
13 reason they transferred him to the  
14 vocational center.

15 Q But the point is, you put in your report he  
16 failed to meet the requirements. You didn't  
17 put in your report you're not sure whether  
18 he failed to meet the requirements or it's  
19 because he committed a burglary. Is that  
20 correct? You didn't put the burglary part  
21 in that, did you?

22 A No, I don't see that in this part, no.

23 Q So it's true there could be other  
24 aggravating circumstances that you found  
25 that you didn't include in your report?

1       A       No. I received a copy of his school records  
2               that indicated low performance after the  
3               report was submitted. And that's why I  
4               testified in terms of additional records  
5               that I was interested in, that's why I  
6               included the school records was the one I  
7               was interested in.

8       Q       But you said you didn't get those. If you  
9               could have gotten them -- you wanted school  
10              records if you could get --

11      A       No, I did get them after the fact.

12      Q       You never amended your report, did you?

13      A       No.

14      Q       You didn't amend your report to say that you  
15              reviewed those records, did you?

16      A       No, I didn't.

17      Q       Appendix B doesn't list his educational  
18              records, does it?

19      A       I'm sorry?

20      Q       Appendix B where it lists the records you  
21              reviewed doesn't include his educational  
22              records, does it?

23      A       No, it does not.

24      Q       So are you saying there is a lot of other  
25              stuff you reviewed that we don't know you

1 reviewed?

2 A No. That is why when asked what information  
3 I needed to update, I included the  
4 information that I received in the very  
5 beginning of the testimony, the school  
6 records.

7 Q All right, just so I have it clear, Dr.  
8 Paramore. What other information, other  
9 than what's listed in Appendix B did you  
10 review that's not listed?

11 A Those two pages of school records.

12 Q So two pages of school records?

13 A Yes.

14 Q That's it?

15 A That's it.

16 Q But you would agree with me that on page 23  
17 in disrupted schooling, you did not include  
18 any information about a burglary that you  
19 testified to.

20 MS. WALKER: Objection, asked and  
21 answered.

22 THE COURT: Sustained, let's move  
23 on.

24 Q Okay. Now, you just told Judge Rains that  
25 as a mitigation specialist, it's important



1 to have an independent evaluation, right?

2 A I said that I wanted to conduct my own  
3 independent evaluation, that that was  
4 important to me, yes, I did say that.

5 Q You also said you reviewed all the memos  
6 prior to interviewing the family members,  
7 correct?

8 A Well, I didn't say prior to. They were not  
9 all reviewed prior to my interviews with the  
10 family because I had so many documents. I  
11 began my investigation prior to reviewing  
12 all of the records that I had obtained from  
13 the defense team.

14 Q Okay. So the family members that you  
15 interviewed, did you read any of the memos  
16 from defense counsel before you went to talk  
17 to them?

18 A No, I don't recall.

19 Q And I think you made this comment several  
20 times during direct that you need to review  
21 someone repeatedly to exhaustion.

22 A You need to -- If you find new information,  
23 then you need to be able to go back to  
24 review someone who may have relevant  
25 information about the information that

1           someone else has reported.

2           Q       Okay. And you testified that sometimes  
3           people may remember things that an  
4           individual might not remember about their  
5           life?

6           A       Yes.

7           Q       Okay. And in this case, did you find things  
8           that Mr. Gavin didn't remember about his  
9           life from family members?

10          A       Yes, I did.

11          Q       Did you go back and re-interview Mr. Gavin  
12          after that to confirm or deny that  
13          information?

14          A       The information came from Mr. Gavin, and I  
15          re-interviewed someone else to discuss the  
16          information with them. I re-interviewed  
17          Mrs. Gavin to discuss the information.

18          Q       Dr. Paramore, follow me for just a second.  
19          You testified earlier that you've only  
20          interviewed Mr. Gavin one time, correct?

21          A       Yes.

22          Q       And then you testified that there is some  
23          information that Mr. Gavin didn't recall  
24          that you got from other people, didn't you?

25          A       I don't believe I said there was information

1           that Mr. Gavin didn't recall.    I said there  
2           is information sometimes when, not recalled,  
3           that you may get information from other  
4           people, from several sources.

5       Q     Did you get any information from other  
6           sources concerning Keith Gavin's life?

7       A     Yes, I did.

8       Q     Did you ever go back and talk to Keith Gavin  
9           about that information?

10      A     Actually, most of the information that  
11           people mentioned about Mr. Gavin, Mr. Gavin  
12           mentioned to me in my interview with him.

13      Q     That was not my question, Dr. Paramore, and  
14           we can move this along a lot quicker if you  
15           will listen to my question and answer it.  
16           Did you ever go back and re-interview Keith  
17           Gavin after you learned some information  
18           from other family members?

19      A     No, I did not.   I only interviewed Mr. Gavin  
20           once.

21      Q     And in this case, how did these interviews  
22           that you did of the family members, how were  
23           they set up?

24      A     I received phone numbers from Mrs. Gavin,  
25           you know, of her children and I called them,

1           scheduled appointments and times to  
2           interview them.

3           Q     And where did you interview them?

4           A     Mrs. Gavin's home. Some interviews, as  
5           listed here, were conducted over the phone.

6           Q     Okay, and would you say that all the people  
7           you spoke to were cooperative?

8           A     Yes.

9           Q     Okay. Would you have gotten any of this  
10          information from them if they hadn't spoke,  
11          wouldn't be willing to talk to you?

12          A     I'm sorry, I need to go back. They were not  
13          all cooperative at the time. I had a  
14          difficult time reaching and interviewing  
15          Steven Gavin.

16          Q     And that's because he was in jail?

17          A     No, he was home. He just would not talk  
18          with me. He was actually in the home while  
19          I was present in the home and just refused  
20          to talk with me until after his rehab.

21                         THE COURT: Until after what?

22          A     Rehab. He checked himself into a rehab  
23          facility. And at that point, Mrs. Gavin  
24          called me and said he was ready to talk with  
25          me.

1 Q Okay, let me ask you this. Was Keith Gavin  
2 willing to talk to you about information,  
3 mitigation information in his life?

4 A Yes, he was.

5 Q Okay. Was Annette Gavin willing to speak to  
6 you?

7 A Yes.

8 Q Was Sharon Gavin?

9 A Yes.

10 Q Was Geanetta?

11 A Yes.

12 Q Elaine?

13 A Yes.

14 Q So all the people listed, other than Victor?

15 A Steven.

16 Q Steven, I'm sorry, Steven. Was cooperative?

17 A Yes. And he was eventually.

18 Q Okay. And if these people had not been  
19 cooperative, you wouldn't have gotten that  
20 information out of them, would you?

21 A No, I would not have.

22 Q And if the defendant had instructed them not  
23 to talk to you and you wouldn't have been  
24 able to talk to them, you couldn't have  
25 gotten that information out of them, could

1           you?

2           A       No, I wouldn't have.

3           Q       I want to talk about this risk factor  
4                /protective factor theory. And correct me  
5                if I'm wrong, but a risk factor is a  
6                predictor that has been scientifically  
7                demonstrated to have a strong link to  
8                adverse outcome such as delinquency,  
9                antisocial behavior, substance abuse, other  
10              behavioral problems?

11          A       Yes.

12          Q       Okay. So if you have a lot of risk factors,  
13                that increases your chance of being violent?

14          A       Yes.

15          Q       Do you ever look at the number of people who  
16                have the same risk factors who never commit  
17                a crime?

18          A       I haven't done research on other people in  
19                regarding risk factors.

20          Q       So you're saying because Mr. Gavin is a  
21                male, he's more likely to commit a crime?

22          A       No, I'm saying that being male is one of the  
23                risk factors but it is the accumulation of  
24                risk factors that the higher the number of  
25                risk factors, the higher the probability.

1 Just being male, no, that would not -- I  
2 would not conclude that he would commit a  
3 crime just because he's male.

4 Q You said exposure in your report, exposure  
5 to television violence was a risk factor,  
6 correct?

7 A Yes, it's listed.

8 Q And the way you made out, Mr. Gavin's family  
9 is extremely poor, correct?

10 A Yes.

11 Q Did we see a television anywhere in that  
12 house that you showed us pictures of?

13 A There was a television. They have a  
14 television in their home.

15 Q In the pictures?

16 A I don't know if you could see it in the  
17 pictures, but.

18 Q And you're saying that they lived in the  
19 projects and it was torn down, and they  
20 still have a television?

21 A You said torn down?

22 Q It was, you know, in bad -- in need of  
23 repair. But they still had a television?

24 A Families had cars, some families had  
25 television. Yes, they had personal

1 entertainment items.

2 Q What television violence was he exposed to?

3 A I don't recall.

4 Q You listed it in your report.

5 A Well, you know, the risk factors are listed  
6 based on the research. I didn't list the  
7 factors. They're listed based on research.  
8 The things that he watched in childhood,  
9 when asked did you ever watch anything on  
10 television of a violent in nature, then the  
11 answer was yes.

12 Q Correct me if I'm wrong, but on page 10 of  
13 your report you put in bold exposure to  
14 television violence.

15 A Yes.

16 Q And you said that's a risk factor that would  
17 lead someone to commit violent acts.

18 A It is listed by the Office of Juvenile  
19 Justice as a risk factor.

20 Q Okay, and I'm asking again, what television  
21 shows did he watch that exposed him to  
22 violence?

23 A I don't recall the list of shows that he  
24 watched.

25 Q Did he give you a list?



1       A       Yes, he did discuss shows that he watched,  
2               but I don't recall the shows that he  
3               watched.

4       Q       Are those shows listed in your report?

5       A       No, they're not.

6       Q       Is everyone that has a large family, does  
7               that increase their likelihood of committing  
8               criminal activity?

9       A       It's listed as a risk factor.

10      Q       That's not my question. Does it increase  
11              the likelihood of committing criminal  
12              activity?

13      A       No. No, it doesn't.

14      Q       If you had a, hypothetically, based on this,  
15              if you had a parent who was one of eight and  
16              another parent that was one of 12, would  
17              their children have an increased likelihood  
18              of committing criminal activity?

19      A       Large family members -- see, I can't answer  
20              that. Large family members are listed as a  
21              risk factor. So that large family member  
22              would put that -- is it a male or female  
23              that you're referring to -- would list that  
24              person in a category of being at risk.

25      Q       Let's say it's a male.

1           A       Okay, then he would be listed as being at  
2                   risk and coming from a large family.

3           Q       You would agree with me, Dr. Paramore, that  
4                   there are people out there who are male,  
5                   exposed to television violence, come from a  
6                   low socioeconomic status, their parents  
7                   committed some type of criminality, had a  
8                   poor parent/child relationship, separation  
9                   from parents, domestic violence, abusive  
10                  parent, large family size, weak social ties,  
11                  anti-social peers, delinquency in siblings,  
12                  gang membership, there are people out there  
13                  that have all these risk factors who haven't  
14                  killed two people, correct?

15          A       Correct.

16          Q       Do you know how many people out there that  
17                   have these things that have not committed a  
18                   crime?

19          A       I do not.

20          Q       And isn't it likely that that number can be  
21                   extremely higher than the number of people  
22                   who actually commit a crime?

23          A       I don't know.

24                   MS. WALKER: Objection to the form.

25                   MS. CASEY: She answered she

1 doesn't know.

2 THE COURT: Asked and answered.

3 Move on.

4 Q Dr. Paramore, do you know how many people  
5 are the population of Alabama?

6 A No, I don't.

7 Q And let's hypothetically say that that's  
8 four million people, okay? Do you know the  
9 number of people that live in poverty in the  
10 state of Alabama?

11 A I do not.

12 Q If the report showed that was 30 percent of  
13 the people, which was essentially 1.2  
14 million people, do you know how many people  
15 are on death row in Alabama for committing a  
16 crime?

17 A I do not.

18 Q 200 people. Okay? How does the risk factor  
19 number play into you have 1.2 million people  
20 in Alabama in poverty, and only 200 people  
21 are on death row?

22 MS. WALKER: I object to form.

23 MS. CASEY: Hypothetically  
24 speaking. She's an expert. If she's going  
25 to put these risk factors out here and

1           analyse them and say it increases, I want  
2           her to explain the discrepancy.

3                   MS. WALKER: Your Honor, I just  
4           frankly don't understand the question and I  
5           don't see its relevance.

6                   THE COURT: In this report, and I'm  
7           really not trying to answer for her, but I  
8           do think that it's important that you and  
9           she are on the same wave link. In this  
10          report, she talks about the affect of the  
11          cumulative affect of these factors, any one  
12          factor or even any one combination of  
13          factors, I think, according to this report,  
14          might not lead one to a crime of violence.  
15          So you are only asking about how one factor,  
16          poverty, would lead to a crime of violence,  
17          and in this report it is clear, I think,  
18          that one factor, using the one you've  
19          chosen, poverty, would not necessarily mean  
20          that a person would have a life of crime or  
21          violence.

22                   MS. CASEY: That's what I'm going  
23          after, Your Honor, I've started with one and  
24          I want to know how much it increases, does  
25          she know how much it increases? She said

1           the more you compound, the higher the  
2           likelihood it is. Well, at two risk  
3           factors, how much higher is it? At three  
4           risk factors, how much higher is it? At  
5           four or five, she says it compounds to  
6           create a likelihood of criminal activity,  
7           well, I need to know how much more likely  
8           you are? If you have all of them, does that  
9           mean you're definitely going to commit  
10          criminal activity?

11                   THE COURT: Well, you can ask her  
12          those questions, I think, in a broader way  
13          rather than go through each one, I mean,  
14          there are probably 50 factors here and I  
15          don't want you to go over 50 factors one at  
16          a time.

17                   MS. CASEY: All right.

18                   THE COURT: And the combinations  
19          are almost unlimited as to which ones may or  
20          may not exist, so let's move on here if we  
21          can.

22          Q        Okay. Do you know the probability or how  
23          much a likelihood a life of violence  
24          increases depending on the number or the  
25          variation of risk factors that a person has?

1           A       No, but it's directly related to the  
2                   protector factors, also.

3           Q       Your answer is no?

4           A       You don't just have the risk factors in  
5                   isolation of protective factors. So if you  
6                   have someone that have a significant number  
7                   of risk factors and they have protective  
8                   factors to balance that out to assist them  
9                   in overcoming that, then the outcome would  
10                  be different.

11          Q       So the point is, there is no calculation or  
12                   way to calculate this?

13          A       I did not calculate it. I don't know if  
14                   there is a way to do it, but that is just  
15                   not something that I did.

16          Q       So you use the system, you just don't know  
17                   if there is some way to calculate it.

18                   MS. WALKER: Object to form.

19                   THE COURT: Well, it's cross-  
20                   examination. She may answer.

21          Q       You use this system in doing a report for  
22                   Mr. Gavin; is that correct?

23          A       Yes, I did.

24          Q       And you don't know if there is a way to  
25                   calculate the likelihood?

1       A       You cannot even consider the likelihood  
2               until you consider the protective factors.

3       Q       Dr. Paramore, can you listen to my question?  
4               It's a yes or no. Okay? Yes or no, you  
5               don't know if there is a way to calculate  
6               it?

7                       THE COURT: When you say calculate  
8               it, are you asking her to quantify?

9                       MS. CASEY: She said there is no  
10              way, just in her answer, there is no way to  
11              calculate how this affects.

12      A       I said I don't know, I have not calculated  
13               it, I don't know a way to calculate it. I  
14               answered it that way.

15                      MS. CASEY: Okay, I'll move on.

16                      THE COURT: While you're taking  
17              that deep breath, let me ask her another  
18              question. On your chart on page 10, there  
19              is an asterisk by some of those risk  
20              factors, and that asterisk is key to the  
21              bottom of the chart. Explain to me why some  
22              of those are -- some of those risk factors  
23              have an asterisk by them. I don't quite  
24              understand that.

25      A       Just from the research, Your Honor. I just



1 included the asterisk just to identify and  
2 reference the researcher that identified  
3 that as a risk factor.

4 THE COURT: Well, I take it that  
5 this chart came out of some standardized  
6 work in this field?

7 A Yes, it did.

8 THE COURT: And they have  
9 attributed some of these risk factors to  
10 those two authors whose names appear there  
11 at the bottom by that asterisk?

12 A Yes.

13 THE COURT: But the other risk  
14 factors are not attributed to any particular  
15 source of any particular expert or  
16 authority. What --

17 A The research was conducted through the  
18 Office of Juvenile Justice. They reference  
19 the ones that came from the other  
20 researchers. They conducted -- they pulled  
21 together 22 researchers that worked for over  
22 two years to compile the research.

23 THE COURT: I guess I just don't  
24 understand why some of these are attributed  
25 to two named authors and the rest of them



1           are not attributed to anybody, but it  
2           doesn't matter, we won't spend any time on  
3           that.

4           A     I just don't want to alter the chart because  
5           I pulled it from their research and this is  
6           the way they had it referenced. Because  
7           from their research, they included large  
8           family sizes and living in poor families.

9           Q     On that same note, that came from the office  
10          of juvenile, those are related to juveniles,  
11          right?

12          A     Yes.

13          Q     Not a 37-year-old man who kills someone?

14          A     Yes, juveniles.

15          Q     When you spoke to Mr. Gavin, was he coherent  
16          in his conversation with you?

17          A     Yes, he was.

18          Q     Fairly intelligent man, isn't he?

19          A     Yes, he is.

20          Q     Seems to know the difference between right  
21          and wrong?

22          A     I didn't do an evaluation on Mr. Gavin.

23          Q     You interviewed him.

24          A     Just my general interview with him.

25          Q     You interviewed him, though.

1 A Yes.

2 Q And it is your testimony earlier that at the  
3 age of nine he started a gang.

4 A Yes.

5 Q And by the age, I think you said, I could be  
6 wrong, 13 he was carrying a gun?

7 A No, he was older than that. I think he was  
8 16.

9 Q By the age 16 he was carrying a gun that he  
10 had bought from the candy lady?

11 A Yes.

12 Q He had committed burglary at the age of 13?

13 A I don't know if he was charged with that,  
14 but he was pulled in for questioning for  
15 that, according to my -- according to the  
16 reports.

17 Q And it's your testimony that this  
18 information is mitigation evidence?

19 MS. WALKER: Objection,  
20 argumentative. It's for a jury to decide  
21 whether it's mitigating or not.

22 THE COURT: Sustained.

23 Q You would have told this information to a  
24 jury during sentencing phase, or it's your  
25 testimony this should have been told?

1           A           Yes.

2                       MS. CASEY: Your Honor, can we  
3 break for lunch and then may I review my  
4 notes before we come back?

5                       THE COURT: Sure, if it's time.  
6 Yeah, it's about noon. There was a question  
7 about a matter you want to take up before  
8 lunch. Can we wait until later to do that?

9                       MR. MAZE: Oh, any time is fine.

10                      MS. WALKER: Your Honor, could we  
11 maybe see how much time Ms. Casey needs? I  
12 mean, I would like to let Dr. Paramore get  
13 back to Chicago as soon as possible. If she  
14 only needs 10 minutes, I'm willing to wait.

15                      THE COURT: Could you do that?  
16 Could you take a minute and just let's maybe  
17 take a 10 minute break.

18                      MS. CASEY: Sure. Okay.

19                      THE COURT: Then let's see if we  
20 can finish and let her go back to Chicago.

21                      MS. CASEY: We'll be done in five  
22 minutes if you will just give us a second.

23                      THE COURT: Okay, five minute  
24 break. Thank you.

25                      (Recess)

1 (Proceedings resumed)

2 MS. CASEY: Briefly, Your Honor.

3 Q Dr. Paramore, you testified about several of  
4 Mr. Gavin's siblings having been shot, a  
5 bullet lodged in the body?

6 A Yes.

7 Q About Steven being jumped by a gang,  
8 admitted to the hospital?

9 A Victor, one of the siblings, yes.

10 Q Did you review any records to confirm that?

11 A No.

12 Q Okay. You also testified that a good bit,  
13 if not a majority, of Mr. Gavin's family had  
14 been incarcerated or committed crimes,  
15 correct?

16 A Yes.

17 Q Did you ever review any records relating to  
18 those incarcerations?

19 A No.

20 Q Did you ever do anything to confirm those  
21 incarcerations by looking at the incident  
22 reports?

23 A No, I did not.

24 MS. CASEY: No further questions.

25 MS. WALKER: Your Honor, I just

1           have one question.

2                           RE-DIRECT EXAMINATION

3           BY MS. WALKER:

4           Q       Dr. Paramore, do you know how many hours,  
5                   either exactly or approximately, you spent  
6                   on putting together your mitigation  
7                   evaluation?

8           A       75 hours.

9                           MS. WALKER: Thank you. That's all  
10                   I have.

11                           RE-CROSS EXAMINATION

12           BY MS. CASEY:

13           Q       Dr. Paramore, how much do you charge per  
14                   hour?

15           A       \$100 per hour.

16                           THE COURT: Your report is dated  
17                   October the 4th of 2007. When were you  
18                   engaged to make this study? How long before  
19                   that were you engaged to make that study?  
20           A       Your Honor, I believe March of '06 I met  
21                   with defense team and shortly after that I  
22                   met with Mr. Gavin and proceeded forward  
23                   until the submission of the report.

24                           THE COURT: Okay. So from March of  
25                   '06 until October of '07, and we're going to

1 call that maybe a year and a half, 18  
2 months?

3 A Yes, sir.

4 THE COURT: But you only spent  
5 about 75 hours on this project?

6 A Just in interviews, 75 hours just for  
7 interviews.

8 THE COURT: How much time did you  
9 spend from start to finish getting this  
10 report done?

11 A It was over 100 hours.

12 THE COURT: Okay, thank you.  
13 Anything else from either of you?

14 MS. WALKER: No, Your Honor.

15 THE COURT: Thank you very much,  
16 you may come down. Hope you get your flight  
17 out okay.

18 A Thanks.

19 THE COURT: All right, do you have  
20 any other witnesses that you plan to offer?

21 MR. MARSHALL: Your Honor, just for  
22 the record, Dr. Haney is not going to be  
23 here, he's got to be deposed.

24 THE COURT: Yes.

25 MR. MARSHALL: But we have no other

1 live witnesses to offer, Your Honor.

2 THE COURT: Yes, that's my  
3 question. So, when we come back after  
4 lunch, we ought to be able to get started  
5 with your witness.

6 MS. CASEY: Yes, sir.

7 THE COURT: And you've got a  
8 question about some photographs?

9 MR. MAZE: Yes, sir.

10 THE COURT: Can we just do that  
11 after lunch?

12 MR. MAZE: Absolutely. We'll just  
13 do it all when we get back. If they don't  
14 object to us just putting them in, then we  
15 won't put the Sheriff on.

16 THE COURT: Have you shown them the  
17 pictures?

18 MR. MAZE: No, that's what I was  
19 going to do, but we can do that now and then  
20 deal with it when we come back.

21 THE COURT: Well, it's five minutes  
22 after 12, let's break until 1:15. If you  
23 have time to show them the photographs,  
24 maybe there could be an agreement reached  
25 about those.

1                   MR. MARSHALL: Yeah, I don't know  
2                   what it is, but I think I know what it may  
3                   be. Why don't you show us the photographs  
4                   before lunch, see if we can reach, you know,  
5                   we may an argument on admissibility, but not  
6                   on the authenticity, in which case we don't  
7                   need a witness.

8                   THE COURT: All right, we'll be in  
9                   recess until 1:15, thank you.

10                  (Recess for the noon hour)

11                  (Proceedings resumed)

12                  THE COURT: Okay, the State has  
13                  marked four photographs. On State's exhibit  
14                  number 1 there are two photographs, and on  
15                  State's exhibit number 2 there are two  
16                  photographs. These are the photographs we  
17                  talked about before lunch?

18                  MR. MAZE: Yes, sir.

19                  THE COURT: You wanted to  
20                  introduce?

21                  MR. MAZE: Yes, sir.

22                  THE COURT: Are you introducing  
23                  them at this time?

24                  MR. MAZE: Yes, sir.

25                  THE COURT: What says the



1           defendant?

2                   MR. MARSHALL: Your Honor, we do  
3           not object to their authenticity, and my  
4           understanding is that if Sheriff Shaffer  
5           were called to testify, he would testify  
6           that they accurately portray the signage,  
7           which I think is the purpose for which  
8           they're being offered, and that he would  
9           also testify that the signage has not  
10          changed since March of 1998. And if he were  
11          to so -- we'll stipulate that that would be  
12          his testimony.

13                  MR. MAZE: That's all we would call  
14          him for, would be for those questions.

15                  MR. MARSHALL: So our only question  
16          would be to relevance because we don't think  
17          it's impeaching.

18                  MR. MAZE: Our answer to that, I  
19          think the Judge knows what our argument  
20          would be, but if you want me to get it on  
21          the record.

22                  THE COURT: Go ahead.

23                  MR. MAZE: Our argument would be  
24          yesterday when Mr. Gavin was testifying, the  
25          argument is that trial counsel was

1           ineffective for not allowing him to testify  
2           and tell the story that he told yesterday.  
3           And during Mr. Gavin's testimony yesterday,  
4           he was asked how he knew to go towards  
5           Leesburg, then to Sand Rock, Collinsville,  
6           up towards I-65 North to Chattanooga if he  
7           had never been in this area before, because  
8           it's the State's theory that he was actually  
9           following Mr. Meeks who does know this area  
10          and was headed back to Chattanooga, and  
11          specifically Ms. Casey asked did you see a  
12          sign that said I-65 North so you knew to  
13          turn right at the intersection at Leesburg?  
14          And his answer was, no, I was going north,  
15          so when I saw a sign pointing north, I just  
16          tried to go north. And the purpose of the  
17          pictures is to show that each time that Mr.  
18          Gavin turned right, the first time it would  
19          have been turning right from Cedar Bluff  
20          Road to Main Street, which is Highway 411.  
21          The signs actually show that you should turn  
22          left to go north, and yet Mr. Gavin turned  
23          right. The second picture is the next  
24          immediate sign that you see after that turn,  
25          and it shows that he was traveling south,

1 not north. And then the last two pictures,  
2 the first one shows that none of the cities  
3 that were pointed as to which direction you  
4 would go if you turned or went straight are  
5 Chattanooga or any other cities that are  
6 other than local Alabama cities that Mr.  
7 Gavin wouldn't know. And then, finally,  
8 when he turned right, he turned right on to  
9 Highway 68 West, not North, so it couldn't  
10 be true that he turned right in Leesburg  
11 because he was turning right because of a  
12 sign that said North. In fact, the only  
13 signage said south is forward and right is  
14 to the west. So his testimony yesterday is  
15 contradicted by the actual signs on the  
16 roads where he turned.

17 THE COURT: Just for the sake of  
18 the record, the interstate number is I-59  
19 rather than I-65.

20 MR. MAZE: You're right. Yes, sir.

21 THE COURT: But I think he was  
22 actually asked or maybe he volunteered that  
23 it was I-65, but in any case, it is 59. All  
24 right, I'm going to admit the exhibits,  
25 State's 1 and 2. Thank you.

1 MR. MARSHALL: Over our objection.

2 THE COURT: Yes, it is.

3 (Whereupon, State's exhibits 1 and 2  
4 admitted into evidence at this time)

5 MR. MAZE: And for that reason,  
6 we're not going to have any other witnesses  
7 other than Dr. King.

8 THE COURT: All right, is he  
9 available?

10 MR. MAZE: Yes, sir.

11 MS. CASEY: The State calls Dr.  
12 Glen King to the stand. And, Your Honor,  
13 just for you to follow along, Dr. Glen  
14 King's declaration was listed at Volume Five  
15 exhibit number 9 at the State's reply brief,  
16 just so you will have that declaration if  
17 you wanted to look at it for testimony.

18 THE COURT: Wait just a minute, let  
19 me think where that is.

20 MS. CASEY: I have an extra copy if  
21 you would like me to bring one up.

22 THE COURT: I think it would be  
23 helpful if I had a copy to look at rather  
24 than this copy that's in the bound volume,  
25 but I do find it as Exhibit 9 in Volume Five

1 of your attachments to the brief --

2 MS. CASEY: Yes, sir.

3 THE COURT: Which is dated --

4 MS. WALKER: And I have an extra  
5 copy.

6 THE COURT: Dated June the 9th,  
7 2008.

8 MS. CASEY: And then, Judge, just  
9 before we get started, just so you'll  
10 understand our order of testimony. Your  
11 Honor granted the State the ability to  
12 interview Mr. Gavin, and as a result of that  
13 interview at Holman Prison there was a  
14 dictation of notes from the interview that  
15 we have supplied to defense counsel. I'm  
16 not sure the Court has a copy. The State  
17 intends to introduce a copy today during  
18 testimony. Would you like to wait until we  
19 get to that point or would you like to go  
20 ahead and have a copy of those?

21 THE COURT: Has it been  
22 transcribed?

23 MS. CASEY: Yes, sir.

24 THE COURT: You can go ahead and  
25 give it to me. Thank you.

1 MS. CASEY: Just so everybody has.

2 THE COURT: So State's exhibit  
3 number 1 is the report -- no, yes -- is that  
4 correct?

5 MS. CASEY: I think it would be 3  
6 because our pictures would have been 1 and  
7 2, and that would be 3.

8 THE COURT: All right.

9

10 DR. GLEN DAVID KING

11 Being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. CASEY:

14 Q Will you please introduce yourself for the  
15 record.

16 A My name is Glen, with one "n", David King,  
17 K-i-n-g.

18 Q Okay. And, Dr. King, how are you employed?

19 A I'm employed with Kirkland and King Clinical  
20 & Forensic Psychologists, Professional  
21 Corporation, with our main office in  
22 Montgomery, Alabama, and I'm also a  
23 practicing attorney.

24 Q Okay. And let's talk a little bit about  
25 your educational background. Will you

1           please tell the Court where you received  
2           your initial undergraduate degree.

3           A       Sure. I earned my Bachelor of Arts degree  
4           from the University of Minnesota in 1968  
5           with a major in psychology and a minor in  
6           chemistry.

7           Q       Did you receive any other educational  
8           degrees or any degrees?

9           A       I did.

10          Q       And what were those?

11          A       I earned my Master of Science degree with a  
12          major in clinical psychology from Florida  
13          State University in 1970. I then earned my  
14          Doctoral degree in clinical psychology from  
15          Florida State University in 1972. As part  
16          of the requirements for the Doctoral degree,  
17          I completed a one year full time residency  
18          at Mayo Hospital, University of Minnesota  
19          Medical School in the department of  
20          psychiatry. I entered law school in 1996  
21          and earned my J.D. degree in 1999, was  
22          admitted to the Bar in May of 2000.

23          Q       Have you ever served as a faculty for any  
24          universities?

25          A       I have. Following completion of my degree

1 at Florida State University, I then went to  
2 Auburn University where I served full time  
3 as a faculty member for 12 years rising to  
4 the rank of full professor. My major duties  
5 there were teaching, of course, doing  
6 research program, directing the psychology  
7 research and training clinic, and primarily  
8 training clinical psychology graduate  
9 students.

10 Q Okay. At what point did you enter private  
11 practice?

12 A I actually had a part time private practice  
13 beginning at the time of my licensure in  
14 this state in 1973. I then started a full  
15 time private practice in 1983 and have been  
16 in full time private practice since that  
17 time.

18 Q Are you board certified?

19 A I am board certified as a clinical  
20 psychologist by the American Board of  
21 Professional Psychology since 1979, and I  
22 also am a certified forensic examiner for  
23 the court system for the state of Alabama.

24 Q And what is a certified forensic examiner?

25 A The designation of a certified forensic



1 examiner is from Rule 11 of the Alabama  
2 Rules of Criminal Procedure, and requires  
3 that through certification by the state  
4 department of mental health, an examiner is  
5 either a licensed psychiatrist or a licensed  
6 clinical psychologist who completes a three  
7 day intensive workshop at Taylor Hardin  
8 Secure Medical Facility, passes a written  
9 examination, and then spends time with a  
10 previously certified forensic examiner to  
11 complete three supervised forensic  
12 examinations. After that is completed,  
13 there is a requirement for six hours of  
14 continuing education per year, and the  
15 certified forensic examiners do contract  
16 evaluations for the Court to determine  
17 usually competency to stand trial and mental  
18 state at the time of alleged offense for  
19 criminal defendants, and I've been working  
20 on contract for the State Department of  
21 Mental Health since 1992 continuously.

22 Q Okay, and do you know how many certified  
23 forensic examiners there are in the state of  
24 Alabama?

25 A There are less than a dozen at this time.

1           The vast majority are on faculty or are on  
2           the staff at Taylor Hardin Secure Medical  
3           Facility. There are only three of us that  
4           are doing contract work for the courts on an  
5           outpatient basis.

6           Q     And do you have any type of licensing in the  
7           state of Alabama other than your law degree?

8           A     Yes, I'm licensed by the Alabama Board of  
9           Examiners and Psychology to be a clinical  
10          psychologist. I'm also licensed by the  
11          Georgia Board of Examiners and Psychology to  
12          practice psychology in the state of Georgia.

13          Q     And just for the record, what is the  
14          difference between clinical psychology and  
15          let's say forensic psychology?

16          A     Clinical psychology is a specialty within  
17          psychology where the training includes four  
18          years minimum of graduate school, one year  
19          full time residency in some type of,  
20          typically some type of medical school  
21          department of psychiatry to be trained to  
22          diagnose and treat mental illnesses of one  
23          type or another. Forensic psychology most  
24          often is a sub-specialty under clinical  
25          psychology, and forensic psychology involves

1           the application of psychological principals  
2           to help courts of various types make  
3           decisions where they might find  
4           psychological input to be helpful, such as  
5           competency to stand trial or mental state at  
6           the time of alleged offense or competency to  
7           be executed and things of that nature.

8           Q     And how many evaluations have you conducted  
9                   for the court system in Alabama to determine  
10                  competency or mental state at the time of  
11                  the events or competency to waive Miranda  
12                  Rights?

13          A     To date I have completed in excess of 4,000  
14                  of those evaluations.

15          Q     And do you know how many counties you have  
16                  worked in the state of Alabama doing  
17                  evaluations?

18          A     I have -- there's been a ton when I actually  
19                  was responsible for doing all of the  
20                  evaluations in 22 counties. Because I also  
21                  personally am responsible for evaluating  
22                  those individuals who violate parole or  
23                  probation and get returned to the Department  
24                  of Corrections, I might end up in any other  
25                  county in the state, so I probably have

1 testified or done reports for more than half  
2 the counties in the state of Alabama.

3 Q All right, let me ask you a question. Have  
4 you ever interviewed or evaluated inmates  
5 who are on death row in the state of  
6 Alabama?

7 A I have. I've also done post-conviction  
8 evaluations for the state of Alabama  
9 Attorney General's Office and also for the  
10 state of Georgia Attorney General's Office.

11 Q And how many death row inmates have you  
12 evaluated in the state of Alabama?

13 A If you're asking me about post-conviction,  
14 probably in the neighborhood of about 50.

15 Q And do you currently know how many inmates  
16 are on death row right now?

17 A I think in Alabama about 200. I'm not sure  
18 about Georgia. I think it would be about  
19 the same.

20 Q Okay. How many times have you testified on  
21 behalf of the State versus on behalf of the  
22 defendant?

23 A Well, I would like to kind of answer that in  
24 two different ways. If we're talking about  
25 preconviction evaluations that I do or guilt

1 phase evaluations, I will usually testify  
2 about 50 percent for the defense and 50  
3 percent for the prosecution. That just  
4 seems to be the way that it works out. On  
5 post-conviction cases in every case I have  
6 been retained by the respective Attorney  
7 General's Office, whether it's Georgia or  
8 Alabama. In Alabama there have been five  
9 cases where, after I completed my  
10 evaluation, I formed the opinion that was  
11 favorable to the petitioner and ended up  
12 being actually hired by petitioner's  
13 attorney on two occasions to testify in his  
14 behalf.

15 Q Okay, and why have you testified 50 percent  
16 for the defense in the evaluation you've  
17 done pretrial or pre-conviction?

18 A It just seems to be the way it works out.  
19 Most the time -- 94 percent of the time my  
20 opinion favors, I'll put it this way, favors  
21 the prosecution about mental state at the  
22 time of the offense and also competency to  
23 stand trial. But in terms of how the cases  
24 actually go to trial or go to hearing, I  
25 wind up about 50 percent testifying for one

1 side or the other.

2 Q And were you retained by the Attorney  
3 General's Office in this case?

4 A I was.

5 Q And in regard to this case, were you  
6 supplied any documents or anything to  
7 review?

8 A Yes, I was.

9 Q And can you tell the Court what you were  
10 asked to review?

11 A For this case, I reviewed the declaration of  
12 Craig Haney, the declaration of Betty  
13 Paramore, records from the State of Alabama  
14 Department of Corrections, report of  
15 investigation of the Alabama Board of  
16 Pardons and Paroles. There were some  
17 records from the Illinois Department of  
18 Corrections, records from Larry Wilson, the  
19 Sheriff of Cherokee County, records from  
20 Prison Health Services, and various Orders  
21 and legal documents from the Circuit Court  
22 here in Cherokee County. In addition, I  
23 also conducted a personal interview and  
24 evaluation of Mr. Gavin.

25 Q I want to break these apart and first ask

1           you did you complete a declaration in regard  
2           to your review of the records in this case  
3           or documents?

4           A        I did.

5           Q        And what was the date of that declaration?

6           A        June 5th, 2008.

7           Q        And does this declaration contain the  
8           information and your opinions as a result of  
9           that review of those documents?

10          A        It does.

11          Q        Okay. And I would ask you from the time  
12          that you did this declaration, did you have  
13          the opportunity to meet with Keith Gavin?

14          A        I did.

15          Q        And can you tell the Court the date you met  
16          with Keith Gavin?

17          A        I met with Mr. Gavin at Holman Prison on  
18          September 30th of 2009.

19          Q        At that time were you able to interview him  
20          or speak with him?

21          A        I was.

22          Q        Okay. I want to start by talking about your  
23          declaration.

24                   MS. WALKER: Your Honor, I don't  
25          mean to interrupt, but I'm wondering if the

1 State is intending to offer Dr. King as an  
2 expert, and if so, in what areas?

3 MS. CASEY: Your Honor, the State  
4 at this time, then, will offer Dr. King as  
5 an expert in clinical forensic psychology --  
6 in clinical and forensic psychology.

7 MS. WALKER: Your Honor, I don't  
8 have an objection to Dr. King's  
9 qualifications, however, I do have a  
10 relevancy objection to any opinions based on  
11 forensic psychology. We have not offered  
12 any opinions in this case that trial counsel  
13 was ineffective for failing to bring forth  
14 evidence that Mr. Gavin suffers from a  
15 mental illness, nor have we raised any  
16 issues under Rule 11 of the Alabama Rules of  
17 Criminal Procedure.

18 MS. CASEY: May I respond?

19 THE COURT: Sure.

20 MS. CASEY: We're not offering him  
21 for mental evaluations, and I think he will  
22 testify he didn't perform a mental  
23 evaluation, but they did offer Dr. Betty  
24 Paramore as a forensic -- had her talk about  
25 forensic psychology.



1 THE COURT: I understand from his  
2 report which you've marked as State's  
3 exhibit number 3 that he also spends a good  
4 bit of time questioning the conclusions  
5 reached by Dr. Haney who has not yet been  
6 deposed but apparently you have a report  
7 that you expect --

8 MS. CASEY: Yes, Your Honor.

9 THE COURT: -- that you expect Dr.  
10 Haney to testify about. I find that this  
11 witness is qualified to testify as an expert  
12 in the area of clinical psychology and  
13 forensic psychology.

14 MS. CASEY: And, Judge, as you  
15 pointed out, Dr. Haney has not yet  
16 testified, however we're going off the  
17 report that he submitted in this case, and  
18 while it may be a little vice versa, we  
19 would like to have Dr. King testify as to  
20 his review of that declaration and go ahead  
21 and make that testimony on the record, even  
22 though Dr. Haney has not yet testified.

23 THE COURT: He may do so.

24 MS. CASEY: Okay.

25 Q I would like to kind of break this apart,

1 Dr. King, and go look at your declaration  
2 first and then talk about your interview of  
3 Mr. Gavin. First of all, did you review the  
4 report of Dr. Haney?

5 A I did.

6 Q And is Dr. Haney a clinical forensic  
7 psychologist?

8 A As far as I can tell he is not.

9 Q According to or according to your knowledge,  
10 based on your knowledge, what is his area of  
11 expertise?

12 A Dr. Haney declares his expertise as a social  
13 psychologist, and I believe he also has a  
14 law degree from Stanford University.

15 Q And based on your information, is Dr. Haney  
16 licensed in any state?

17 A Not that I can determine. He's not listed  
18 on the roster of licensed psychologists in  
19 California where he resides, nor is he  
20 listed on the roster for Alabama.

21 Q Okay. And based on Dr. Haney -- or let me  
22 ask you, what is your interpretation or  
23 understanding of Dr. Haney's diagnosis of  
24 the defendant?

25 MS. WALKER: Objection, Dr. Haney

1           did not make a diagnosis of Mr. Gavin.

2                   THE COURT: I don't have the report  
3           from Haney.

4                   MS. CASEY: I'll respond that he  
5           has indicated he suffers from  
6           institutionalization.

7                   MS. WALKER: Well, lay a foundation  
8           to what you're referring to, please.

9           Q       And my question is what is your  
10           understanding of what Dr. Haney said? I can  
11           ask it like this. First of all, is there a  
12           term or a word that Dr. Haney repeatedly  
13           uses in his discussions of the defendant,  
14           Keith Gavin?

15          A       There is.

16          Q       And what is that word?

17          A       He uses the term institutionalization or he  
18           refers to Mr. Gavin as an institutionalized  
19           man or institutionalized inmate.

20          Q       And what is your understanding of the term  
21           institutionalization or institutionalized  
22           man?

23          A       Well, actually, I don't really have an  
24           understanding of what that term is. It is  
25           not a scientific term, it's not a clinical

1 term that any of us uses for any diagnostic  
2 category, clinically or forensically. I  
3 think that I have run across that term in  
4 some years past as a kind of sociological  
5 term for what sociologists typically believe  
6 happens to or explore about what happens to  
7 individuals who are in penal institutions  
8 for some period of time.

9 Q Is there any such diagnosis or reference to  
10 the term institutionalization or  
11 institutionalized man within the  
12 diagnostical and statistical manual?

13 A There is not.

14 Q Is this a recognized condition or diagnosis  
15 in clinical practice?

16 A It is not.

17 Q Is this essentially a theory, a sociological  
18 theory?

19 A I'm not sure that I would even grace it with  
20 the term theory because theory is usually a  
21 scientific kind of notation that allows us  
22 to make some kinds of predictions,  
23 quantifications, and that sort of thing.  
24 It's more of an opinion or an idea, I think,  
25 rather than a theory because it really

1 doesn't predict anything.

2 Q Okay. And according to Dr. Haney, how did  
3 the defendant in this case or what is your  
4 understanding of how the defendant in this  
5 case became institutionalized?

6 A It appears to me that he simply was labeled  
7 as institutionalized because he spent 17  
8 years in the Department of Corrections.  
9 There are a number of other descriptions  
10 that Dr. Haney makes about institutionalized  
11 people in general, but as best I can  
12 ascertain, it is just based on the fact that  
13 he was in prison for 17 years.

14 Q And based on your experience as a  
15 psychologist, forensic psychologist and  
16 clinical psychologist, is there any evidence  
17 to support the mere fact that you're in the  
18 Department of Corrections for many years  
19 would lead you to commit crimes?

20 A Absolutely not.

21 Q Did Dr. Haney indicate that Mr. Gavin was in  
22 any type of special education classes?

23 A I don't recall whether it was Dr. Haney or  
24 Dr. Paramore that referred to that, but I  
25 believe there was some reference in some

1 report I read that he was in special  
2 education classes.

3 Q Did they also indicated that he was of low  
4 intelligence?

5 A I believe I saw some reference to that at  
6 some point, yes.

7 Q And was that contradicted by anything that  
8 was found within Dr. Haney's report?

9 A Well, I think that the fact that Mr. Gavin  
10 earned his GED while in prison and took  
11 college courses and also benefited from  
12 other kinds of experience or activities  
13 would not indicated he was mentally retarded  
14 or of low intelligence, and I think that  
15 would be contradictory.

16 Q Okay. And that was when he was in prison  
17 the first time?

18 A That's correct, when he was in the  
19 Department of Corrections in the state of  
20 Illinois.

21 Q In Dr. Haney's declaration, did he ever  
22 assert that Mr. Gavin was exposed to  
23 numerous risk factors that would predispose  
24 him to juvenile violence?

25 A He did.

1 Q And were there any contradictions in Dr.  
2 Haney's reports as to that assertion?

3 A Yes, there are. As far as I can tell by Mr.  
4 Gavin's report and all the other information  
5 I've reviewed, he was never arrested or  
6 charged as a juvenile, so he was at risk for  
7 all these factors, he wasn't arrested or  
8 charged as a juvenile.

9 Q I want to ask you about your interview now  
10 with Mr. Gavin. When did you interview him?

11 A I saw him on September 30th of 2009, last  
12 September 30th.

13 Q And do you recall -- well, first of all,  
14 where did you interview him at?

15 A I saw Mr. Gavin in Holman Prison in what is  
16 typically referred to, I think, as the break  
17 room, it's the visitor's room that's right  
18 inside the entrance to the prison.

19 Q And how long did you speak to Mr. Gavin?

20 A We spent somewhere about two and a half  
21 hours, I think, together. It may have been  
22 a little longer. I think they may have had  
23 a count and we ended up talking a little  
24 longer after the interview was concluded.

25 Q And describe for the Court how that



1 interview began.

2 A I started the interview with Mr. Gavin by  
3 informing him, as I always do, about who  
4 hired me, why I was there, what would happen  
5 with any and all information that he  
6 provided to me. Basically explaining that  
7 there was no confidentiality and no  
8 privilege attached to our conversation or my  
9 interview. And I also told him that if I  
10 were to testify or if my interview notes  
11 were to be used in litigation, that copies  
12 would be provided to his attorneys for their  
13 use well in advance. He understood all of  
14 that and we then proceeded on through an  
15 interview and history.

16 Q What was Mr. Gavin's demeanor when you first  
17 started to interview him?

18 A Throughout the interview Mr. Gavin was most  
19 pleasant. We had a good conversation. He  
20 was a little reserved right at the very  
21 beginning, but once I explained who I was  
22 and what was going to happen and what would  
23 happen with any of the information, he  
24 warmed up and he was absolutely a gentleman  
25 throughout the entire time that I spent with



1 him.

2 Q Okay. Did Mr. Gavin report to you any  
3 physical or medical difficulties?

4 A He did not. He indicated, actually, a  
5 history that was fairly devoid of those  
6 kinds of problems. He had three  
7 hospitalizations, by his report, from  
8 earlier in his life, but he did not have any  
9 serious physical or medical difficulties  
10 that were a continuing problem for him.

11 Q And did he ever indicate to you that he had  
12 any current or past problems with drugs or  
13 alcohol?

14 A He did not. And when I asked him specific  
15 questions about his alcohol and drug usage,  
16 it was apparent to me that he had actually a  
17 history that was remarkably lacking in  
18 problems with alcohol or drugs.

19 Q Would you consider, based on your interview  
20 and discussion with Mr. Gavin, would you  
21 consider him a substance abuser or a drug  
22 abuser?

23 A Absolutely not. He had some reports of what  
24 I would call typical usage, occasional use  
25 of marijuana, and that was the only drug

1           that he had used on occasion. The kind of  
2           use that he reported I would not even  
3           classify as abuse. His alcohol intake was  
4           very occasional and he had no history of  
5           usage of any other drugs.

6           Q     Okay. And did you speak with the defendant  
7           about his family?

8           A     I did.

9           Q     Okay. And will you tell us, first of all,  
10          how that conversation began?

11          A     When I ask questions about family, it's  
12          usually in what we call a social history.  
13          By that time I've asked questions about  
14          whether he's had any previous history with  
15          mental health professionals, substance abuse  
16          and so on, and I asked Mr. Gavin in a very  
17          systematic fashion the ages of his parents  
18          and whether they had any history of physical  
19          or medical problems or mental problems, and  
20          that would include substance abuse problems,  
21          and also asked him, you know, a sentence or  
22          two describe what your mother was like and  
23          describe what your father was like. In both  
24          cases, he indicated that he thought his  
25          parents were loving, devoted and good

1 parents.

2 Q Okay. Did he indicate that his father was  
3 deceased?

4 A He did. He reported that his father had  
5 died, I think, of a heart attack.

6 Q Okay. And did he indicate whether or not  
7 his parents were still living together at  
8 the time of his father's death?

9 A It is my understanding they were.

10 Q Did he ever tell you anything about his  
11 father, his father's behavior, toward him?

12 A I asked specifically whether Mr. Gavin had  
13 ever been sexually abused as a child and he  
14 reported he had not. I asked if he had ever  
15 been physically abused as a child and he  
16 reported that he had not. I did engage in  
17 some follow-up questioning about that  
18 because I had read previous reports that his  
19 father was reported to have been abusive,  
20 and I asked Mr. Gavin if he was sure about  
21 that or if there were times when his father  
22 might have been abusive, and his response to  
23 that was that his father -- he didn't really  
24 see his father as abusive. He said on  
25 occasion maybe his punishment got a little

1           exaggerated or a little bit, I think his  
2           word was borderline, actually, maybe  
3           bordered on that, but that was the extent of  
4           the report of anything close to physical  
5           abuse.

6           Q       Okay. And did you feel that Mr. Gavin  
7           during your conversation was very forthright  
8           and open with you?

9           A       He was. He answered all my questions  
10          directly and I didn't sense that he was  
11          malingering or trying to exaggerate one way  
12          or the other throughout the evaluation.

13          Q       And did you and Mr. Gavin discuss his  
14          siblings?

15          A       We did.

16          Q       And according to your conversation with him,  
17          can you describe the number of siblings he  
18          has or tell us the number of siblings he  
19          had?

20          A       He told me that he had 11 siblings. He has  
21          five brothers and six sisters. And he told  
22          me that he understood two of his brothers  
23          were deceased, and he went through briefly  
24          each one of his siblings by name, their  
25          approximate ages, or the ages of their death

1           if he knew it, and whether he knew of any  
2           physical or mental problems that any of them  
3           had or substance abuse problems. In  
4           addition, he indicated that -- he described  
5           his family as quite close, that all of his  
6           brothers and sisters got along extremely  
7           well and that he was often the caretaker for  
8           all his siblings, both the two older ones  
9           and the younger ones.

10          Q       Did he ever indicate to you that he  
11                attempted to make sure they didn't get in  
12                trouble or that they did not get in the  
13                wrong crowd?

14          A       He did, actually. He indicated that his  
15                mother had kind of charged him with  
16                following his siblings around and making  
17                sure that they stayed out of trouble, and  
18                that he was supposed to look after them and  
19                make sure that they didn't get in with the  
20                wrong crowd.

21          Q       Okay. Let me ask you just a little bit  
22                about his social history, that being first  
23                of all, his school. Did he talk to you  
24                about his school, his educational history?

25          A       He did.